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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JERRY SPICER,

9 Plaintiff,

10 v.

11 DR. HENRY RICHARDS,

12 Defendant.

Case No. C07-5109 FDB

ORDER ADOPTING AMENDED
REPORT AND RECOMMENDATION
GRANTING SUMMARY
JUDGMENT DISMISSING
PLAINTIFF'S CLAIMS

13 This matter comes before the Court on the Report and Recommendation of the Magistrate
14 Judge that Defendant's motion for summary judgment seeking dismissal of Plaintiff's remaining civil
15 rights claims¹ be granted. Plaintiff has filed an objection to the Report and Recommendation.
16 Plaintiff alleges that the Special Commitment Center Superintendent, Dr. Richards, violated his rights
17 during confinement regarding (1) possession of specific property, (2) ambient noise level and
18 temperature of meals in the resident dining hall, (3) lack of conjugal or contact visits, (4) insufficient
19 telephone access, (5) interference with religious ministry, and (6) conditions of confinement worse
20 than prison. As detailed by the Magistrate Judge, the ban on the specific personal property in
21 question is reasonably related to legitimate penological interests and Plaintiff has provided no
22 authority to the contrary. The uncontroverted evidence demonstrates that Plaintiff's rights were not
23 violated with regard to noise levels or the temperature of food service. The prohibition of conjugal


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25 ¹This Court previously granted summary judgment dismissal of Plaintiff's claims relating to
the privilege level system and sexually explicit materials policy.

1 visits is reasonably related to legitimate penological interests and Plaintiff has provided no evidence
2 which establishes a person in his position has a constitutional protected right to have conjugal
3 visitation. Plaintiff has offered no evidence to support his assertion that telephone access is so
4 inadequate as to be unconstitutional. Plaintiff has offered no rebutting evidence that would refute
5 Defendant's evidence regarding living conditions and that would support a finding of any
6 unconstitutional condition of confinement. Finally, Plaintiff does not allege nor offer any evidence
7 that he is denied the opportunity to practice his religion. The policies regarding ministry to other
8 inmates serves a legitimate penological interest and does not violate any constitutional right of
9 Plaintiff.

10 The Court, having reviewed the Amended Report and Recommendation of Magistrate Judge
11 Karen L. Strombom, objection to the Report and Recommendation, and the remaining record, does
12 hereby find and ORDER:

- 13 (1) The Court adopts the Amended Report and Recommendation;
- 14 (2) Defendant's motion for summary judgment [Dkt. # 34] is **GRANTED**; and
- 15 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
16 and to the Hon. Karen L. Strombom.

17 DATED this 11th day of August, 2008.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE